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SUBJECT: CZECHING RATIFICATION OF LISBON TREATY?

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Classified By: Acting DCM John Law for reasons 1.4 (b) and (d).

11. (SBU) Summary: With the ratification of the Lisbon Treaty in Poland on October 10, European eyes now have turned to the Czech Republic - the last country remaining to ratify. While the treaty has been approved by both chambers of Czech Parliament, it is now before the Czech Constitutional Court and will then pass to President Klaus to sign. Klaus, who is no stranger to controversy, has angered many European officials with his latest comments on October 8 about adding a "footnote" to the treaty. Klaus has not, however, said whether this is his one and only caveat, or indeed whether, or when, he will sign the treaty. Domestic and EU pressure continues to mount on Klaus as well as the interim government of Jan Fischer. End Summary.

When Klaus Speaks...

12. (U) Since a group of Czech Senators submitted their petition challenging the Lisbon Treaty to the Constitutional Court on September 29, the typically voluble President Klaus had remained relatively silent - until October 8 and 9, that is. Up until this point, Klaus had only made one telling comment picked up in the British Daily Telegraph on October 5, fueling speculation that Klaus would sign the treaty, perhaps by the spring. Klaus was quoted as stating, "I am afraid that the British people should have been doing something really much earlier and not just now..." (Note: British Conservative David Cameron reportedly wrote to Klaus in September asking Klaus to delay signing the treaty until British elections, thus allowing Cameron, if elected, to call for a British referendum on the treaty. End Note.)

Klaus Clarifies Call for a Clause

13. (U) On October 8, Klaus spoke to Swedish Prime Minister Reinfeldt. Immediately following the call, which Reinfeldt told the press he had been trying to make since October 2, Reinfeldt indicated that Klaus wished to add a footnote to the treaty with a reference to the EU's Charter of Fundamental Rights. This, of course, set off a furor of comments from officials in other EU member states. On October 9, Klaus held a press conference to address some of these issues, noting that Reinfeldt had disclosed contents of their conversation that they had agreed were to be confidential.

14. (U) Klaus wryly noted that it was not his intention to speed up the ratification process since the Czech Constitutional Court is reviewing the treaty. He also stated that it was his belief that the treaty constitutes a fundamental change for the Czech Republic and a step in the wrong direction. He also cited the possibility that it would make it possible for Sudeten Germans to bypass Czech courts and raise property claims before the Court of Justice of the EU, even possibly reexamining decisions of Czech courts that

are legally binding. (Note: Neither the Czech government nor Czech legal experts share Klaus's apprehensions. End Note.)

European Eyes on the Czech Republic

¶15. (SBU) The Czechs (especially Czech government officials) are well aware that the eyes of the rest of Europe are upon them. It is also clear that many EU officials and other member states are extremely unhappy that while the Czech government supports the treaty and parliament has approved it - without requesting any "opt outs" - they now find themselves in the hands of the Czech Constitutional Court and Euroskeptic President Klaus. Swedish PM Reinfeldt reportedly told Klaus that this request "is very late in the process," and "the wrong message at the wrong time." French FM Kouchner was even more blunt on October 8 when he stated, "We are not going to change the Lisbon Treaty, it has been approved by the Czech Parliament and by the Czech Senate in the precise terms in which everybody has accepted it... I have no doubt that President Klaus is going to invent many more difficulties, but I think that the Czech people accept that their representatives having voted, having said yes each time to this treaty precisely without changing one word, will influence him enough for it to finally be done." As well, European Commission President Barroso told Czech PM Fischer on October 13 that "We expect the Czech Republic to honor the commitment it has taken. It is in the interests of nobody, least of all the interests of the Czech Republic, to delay matters further."

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All Czech Officials But Klaus, Attempt to Allay Fears

¶16. (SBU) Several Czech Ministers and even PM Fischer have tried to allay the fears of other EU leaders by offering assurances that the Czech government supports ratification of the treaty, once the court renders its decision. Senator Oberfalzer, one of the Czech Senators who submitted the September 29 petition and who shares many of Klaus's reservations about the expansion of the EU, anticipates that Klaus will sign the treaty. Oberfalzer believes the pressure, both from Czech politicians as well as EU leaders, will quickly become too great for Klaus to oppose. (Note: If Klaus refuses to sign, the Czech Parliament lacks the power to compel the Czech President to sign a treaty or to override his decision not to. Under the Czech Constitution, the only way the President could be removed from office is if he was prosecuted for high treason before the Constitutional Court on the basis of an indictment by the Senate. End Note.)

Senator Oberfalzer - No Plans to Attempt Another Challenge; His Perspective on Court

¶17. (SBU) Senator Oberfalzer told emboffs on October 8 that he anticipates the Constitutional Court will rule that the Lisbon Treaty is in keeping with the Czech Constitution. He also believes the court will make an announcement soon. (Note: He referenced late October or early November although he did not comment on why he believes this. End Note.) While Czech press has speculated that these Senators might initiate another petition in order to continue to delay ratification of the treaty, Senator Oberfalzer indicated that there were no further steps being planned by the Czech Senators. If the court rules that the treaty is in keeping with the Czech Constitution, the treaty would return back to President Klaus for his signature as both houses of the Czech parliament passed the Lisbon Treaty in May 2009.

Czech EU Commissioner?

¶18. (SBU) With those Czech officials who care about the Czech

role within the EU, there is some nervousness about the fate of the future "Czech" EU Commissioner and what portfolio this commissioner may be assigned. According to reports following the September 29 meeting between Commission President Barroso and former Czech PM Topolanek, the Czechs were warned that if the Lisbon Treaty is not ratified because of President Klaus's refusal to sign the treaty, the commission would be reduced in size (according to the current Treaty of Nice provisions) and the member state to lose a commissioner would likely be the Czechs.

¶9. (SBU) The Czech Republic has done little to lobby for a particular Commission portfolio, as they have yet to ratify the treaty, nor have they settled on a candidate to propose. The Social Democrats (CSSD) have endorsed current Commissioner Vladimir Spidla, while the Civic Democrats (ODS) have not endorsed a candidate, although former Deputy Prime Minister Alexandr Vondra and former Prime Minister Mirek Topolanek's names are frequently mentioned. The smaller parties of KDU and the Greens have endorsed Pavel Svoboda and former Presidential Candidate Jan Svejnar respectively. Reflecting on the current state of Czech domestic politics, ODS Senator Oberfalzer told Emboffs that he anticipates the Czechs will settle on a Social Democrat. The ODS international secretary told emboff not to be surprised, however, if the Czech nominee is a dark horse, as the candidate will need to be acceptable to both CSSD leader Jiri Paroubek and ODS leader Mirek Topolanek.

Background: State of Play at Czech Constitutional Court

¶10. (SBU) The Czech Constitutional Court eliminated one hurdle to Lisbon Treaty ratification in the Czech Republic on October 6 by dismissing a "procedural" petition from August 2009, deciding this was a legislative matter that did not meet the bar of a constitutional challenge (Ref A). Czech PM Jan Fischer and Czech Minister for EU Affairs Stefan Fule both welcomed the court's decision, noting that it "is an important step toward the completion of the ratification process in the Czech Republic."

¶11. (SBU) There has been no decision on the petition submitted on September 29, which raises broad issues such as sovereignty and supra-national powers. On October 13 the court announced that there will be a public hearing on this matter October 27; it did not state when it will render a decision will be rendered. The Constitutional Court decided on a petition last year that the most controversial aspects of the Lisbon Treaty are not in conflict with the Czech Constitution (and political analysts anticipate that the

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court is likely to uphold its earlier ruling). As well, the German DCM told Charge Thompson-Jones that Constitutional Court Chairman Pavel Rychetsky told German Ambassador Haindl in mid-September that in anticipation of a court challenge from Czech Senators, the court had already produced draft opinions on all conceivable constitutional issues related to Lisbon, and would be able to produce a ruling on short notice, if needed.

Where's the USG Interest?

¶12. (C) Comment: Czech relations with the EU have become strained over the last half year, since the March 2009 fall of the Topolanek government in the middle of the Czech EU Presidency. With the fall of the Topolanek government, the Czechs lost credibility with EU partners, who questioned whether the Czechs took seriously their responsibility for leading the EU Presidency. This loss of credibility within the EU matters. The Czech Republic often views issues in a similar vein to the U.S. and in the past it has often willingly pressed for EU consensus positions which closely track with USG views. Second, the Lisbon treaty, which

outlines reforms on how the EU does business, including engagement with third countries, cannot take effect until it is fully ratified by all EU members. While engaging the EU has always been a bit of a challenge, a few of the reforms could, theoretically, simplify U.S.-EU engagement. The Czech "troublemakers" continue to face strong criticism from many EU partners for holding up this process. End Comment.
Thompson-Jones